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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,935	06/15/2001	Bhajmohan (Ricky) Singh	115808-459	8096

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EXAMINER	
BHAT, NINA NMN	
ART UNIT	**PAPER NUMBER**
1764	

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/881,935	SINGH ET AL.	
	Examiner	Art Unit	
	N. Bhat	1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-8-2005 has been entered.

2. Applicant's timely filed and properly executed Terminal Disclaimer has been accepted and entered in the application. The obviousness-type double patenting rejections are now rendered moot with the timely filed and properly executed Terminal Disclaimer.

3. Applicant's arguments are not persuasive for reasons of record delineated in the previous office action and the following: It is the position taken by the Office, that the in claim 1, "suggesting a pre-manufactured kibble" and suggesting an additive is no more than what a veterinarian would do when examining a dog or cat or animal and then suggesting either adding a supplement to food or a drug to be administered and therefore applicant's arguments are not persuasive. Applicant is not actively supplying a food, nor has applicant supplied the computer or kiosk in order to adjust the pre-manufactured kibble and provide the instructions. This all can be done with a conversation with the veterinarian who has either received results from testing done on an animal or examining an animal. With respect claim 24 where applicant assumed this claim was deemed allowable, this is not the class, and the claims left of the recitation of

claims as an inadvertent type the rejection of claim 24 should be over the 35 U.S.C. 103(a) rejection over Abene in view of Johnson reference.

4.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1-17,23 and 25-28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Abene for reasons of record stated September 10, 2004.

Abene et al. teach collecting information relating to certain attributes and physical conditions of a pet to form a pet profile, analyzing the information from the pet profile to from a dietary health management system.[Note column 3, last paragraph]

Mixtures of selected functional ingredients can be added to a pre-made dry kibble.[Note Column 3,line 18, and Column 4, liens 55-57]. Included are specific feeding instructions[Note Column 2, lines 67-68]. With respect to claim 12, receiving through and electronic interface a user input comprising and individual pet profile,

Abene et al. teach the appropriate formulations for customized dry kibble production and addition of pet food products can be determined manually form the pet profile or alternatively a software program that will convert the information into an appropriate formulation for the customized dry kibble and will determine the proper wet food, for complete dietary health management system is contemplated. For example, the software system could be a WINDOW based software system that accepts manual input about the general health conditions of an animal and can be run on a startup desktop computer (electronic interface) and is capable of performing basis mathematical algorithms.[See Column 5, liens 33-57]. With respect to claim 17, wherein the custom pet food additive based on the process of using the individual pet profile comprises creating at least one of a gravy, sauce coating, thickener, topping and powder this is specifically taught in Claim 1, step e, where Abene recites coating the volume of dry kibble pieces with a mixture of functional ingredients to coat the kibble and specially teaches coating with safflower oil, fax seed oil, vitamin E oil.[See also Example1].

However, Abene does not teach providing an individual pet profile that includes information based on user input and information obtained from a biological sample analysis of the pet.

Applicant argues that nowhere in Abene is user input from the pet owner obtained or that using a biological sample from the pet used in order to provide a pet food specifically formulated to the pet. The examiner disagrees with applicant's assessment of the art. Abene teaches in Column 32, lines 45-54, providing a customized dietary health management system for pets that includes a method of

providing a unique dry food product coupled with wet food, functional snacks and treats and health accessories selected on the basis of the nutritional needs of the animal. The customized dietary health management system is formulated from information provided by the pet owner, the pet's veterinarian or animal heath care provided that relates to certain attributes and physic conditions of the pet. This information is collected on the pet profile form completed by the pet owner or veterinarian. Admittedly, this is not inputted directly into a computer, which includes the software package for taking the pet profile and then correlating it with the specific food. But, implicitly, after filling out the form, the information from the pet profile is analyzed and a customized diet and health management system is formulated. The dietary health management system customized the essential and nonessential nutrients for the animal based on a comparing the pet to an average companion pet and correlating and providing an individual diet based on the animal's life stage, activity, level and other health related inputs. The type of information requested for pet profiling is taught in Table 2. With respect to applicant's limitation and argument that Abene does not teach taking information from a biological sample analysis from the pet, this is not persuasive because Abene teaches that the pet profile form can be completed by a veterinarian or a the pet health care provider, most veterinarians or health care providers will perform blood tests or any other type of tests in order to diagnosis a problem of a pet. It would have been obvious if there were information that the veterinarian had, from a biological sample, i.e., blood chemistry, the veterinarian when filling out the profile would be able

to include this information using the Abene pet profile form, thus rendering applicant's invention as a whole obvious.

3. Claims 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abene et al. in combination with Jones et al. [6,042,857].

Abene et al. disclose the invention substantially as claimed for reasons delineated above but does not teach including specifically pysllium fiber to the additive in the proportions as claimed, the sodium pyrophosphate, nor the pH lowering agents to bring the pH between about 2.0 and 3.0

Jones et al. teach providing a pet food, which is microbially stable, has an increased shelf life, freshness, palatability and nutritional value added pet food. The ingredients includes are high fibers such as oats, flax see meal and pysillium to produce a diet high in soluble fiber.[Note Column 3, lines 55-Column 4, lines 329]. Jones et al. teach that the psyllium is added in order to bind the water, which renders the water unavailable for microbial growth and oxidation. The amount of edible soluble fiber is above 3% which is higher than what is claimed by applicant but to reduce the amount or to modify the amount of psyllium added would have been obvious to one having ordinary skill in the art because the art recognizes that the amount of soluble fiver does bind water and to modify based on how much water binding is required and health benefits to be achieved ahs been taught by both Abene and Jones and to make the modification has been taught and suggested by the prior art. With respect to claim 24 wherein applicant includes an additive of sodium pyrophosphate for improving skeletal and dental health this would have been an obvious expedient, additive or functional

ingredient, which has been broadly taught by Abene. Further, taught by Jones et al. is to provide a prolonged shelf life pet food and the products include combinations of preservatives and/or anitmyotics and include high levels of sugars, edible organic acids and inorganic acids to maintain pH and to manipulate the amount of acid to provide a pH in the range of 2 or 3 would have been obvious to one having ordinary skill in the art absent criticality in showing.[Note Column 4, lines 63-67]

4. This is a RCE of applicant's earlier Application No. 08/881,935. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

N. Bhat
Primary Examiner
Art Unit 1764

6.